

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Transamerica Insurance Company of New York :  
Formerly Premier Insurance Company of New York : AFFIDAVIT OF MAILING  
:  
for Redetermination of a Deficiency or for Refund :  
of Corporation Franchise Tax under Article 33 of :  
the Tax Law for the Year 1978. :  
\_\_\_\_\_

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 7th day of November, 1985, he served the within notice of Decision by certified mail upon Transamerica Insurance Company of New York, Formerly Premier Insurance Company of New York, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Transamerica Insurance Company of New York  
Formerly Premier Insurance Company of New York  
Attn: John Fleischer, Tax Manager  
1150 S. Olive St.  
Los Angeles, CA 90015

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
7th day of November, 1985.

David Parchuck

Barrie A. Huchman

Authorized to administer oaths  
pursuant to Tax Law section 174



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

November 7, 1985

Transamerica Insurance Company of New York  
Formerly Premier Insurance Company of New York  
Attn: John Fleischer, Tax Manager  
1150 S. Olive St.  
Los Angeles, CA 90015

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 & 1519 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
TRANSAMERICA INSURANCE COMPANY OF NEW YORK,	:	
formerly	:	DECISION
PREMIER INSURANCE COMPANY OF NEW YORK	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 33 of the Tax Law for the Year 1978.	:	

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Petitioner, Transamerica Insurance Company of New York, formerly Premier Insurance Company of New York<sup>1</sup>, 1150 South Olive Street, Los Angeles, California 90015, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 33 of the Tax Law for the year 1978 (File No. 36014).

On December 19, 1984, petitioner advised the State Tax Commission, in writing, that petitioner desired to waive a formal hearing and to submit the case to the State Tax Commission for decision, with all briefs and documents to be submitted by March 19, 1985. After due consideration, the State Tax Commission renders the following decision.

ISSUES

I. Whether petitioner was subject to Corporation Franchise Tax under Article 33 of the Tax Law.

II. Whether the Audit Division properly determined that petitioner's entire net income should be allocated completely to New York.

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1 On October 1, 1981, the name Premier Insurance Company of New York was changed to Transamerica Insurance Company of New York.



FINDINGS OF FACT

1. During the year in issue, Premier Insurance Company of New York ("Premier") was a New York corporation which was a wholly-owned subsidiary of Transamerica Insurance Company ("Transamerica"), a California corporation.

2. Premier's business activities were limited to the writing of workers' compensation insurance in New York.

3. In 1978, petitioner made wage and commission payments in the amount of \$89,222.00 to its agents and employees in New York as compensation for the efforts of its employees and agents selling insurance policies.

4. In accordance with an agreement with its parent, Premier transferred all premiums and liabilities arising from insurance contracts to Transamerica. That is, Transamerica reinsured the insurance contracts underwritten by Premier. In addition, Transamerica reimbursed Premier for all policy acquisition costs, including commissions.

5. Premier filed a State of New York Franchise Tax Return for Insurance Corporations for the year 1978. On this return, petitioner reported a zero allocation of its entire net income to New York. This, in turn, was based upon petitioner having reported no wages or premiums as allocable to New York. In conjunction with this return petitioner remitted a check in the amount of \$2,750.00 representing the first installment for the period following that covered by the return.

6. On October 15, 1981, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of franchise tax on insurance corporations in the amount of \$13,136.00, plus interest of \$3,143.71, for a total amount due of \$16,279.71. The amount of tax asserted to be due included \$2,750.00 representing the first installment for the period following December 31, 1978.



The Statement of Audit Adjustment, which had been issued, stated, in substance, that since there were no premium revenues allocable to New York and since the wage factor was one hundred percent allocable to New York, petitioner was required to allocate one hundred percent of its entire net income to New York.

7. On August 10, 1982 the Audit Division refunded the \$2,750.00 prepayment plus interest of \$518.73. The refund was applied to petitioner's tax liability for the year ended December 31, 1980.

8. On or about June 20, 1984, petitioner remitted a second check for \$2,750.00 as payment for the first installment for the period following December 31, 1978.

9. Petitioner has conceded that if it is subject to the franchise tax on insurance corporations, the premium factor should be excluded from the allocation formula.

#### CONCLUSIONS OF LAW

A. That Tax Law §1501(a) imposes a franchise tax on, inter alia, "[e]very domestic insurance corporation and every foreign...insurance corporation, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, for all or any part of its taxable year..." with certain exceptions not relevant herein.

B. That the term "insurance corporation" is defined by Tax Law §1500(a) as including "...a corporation...by whatever name known, doing an insurance business...".

C. That the term "insurance business" is not defined by Article 33 of the Tax Law. However, during the period in issue, section 41(3) of the Insurance



Law defined the term "doing an insurance business" as including, inter alia, "...the making, as insurer, or proposing to make as insurer, of any insurance contract...".

D. That since Premier was exercising its corporate franchise and doing business in New York by the making of workers' compensation insurance contracts, it was subject to the franchise tax on insurance corporations pursuant to Article 33 of the Tax Law (Tax Law §1501[a]). It is noted that neither I.R.C. §801, which defines life insurance companies, nor Revenue Ruling 56-106, which dealt with a situation where a company ceased issuing insurance policies, is dispositive of the issues presented herein.

E. That during the period in issue, Tax Law §1504(a) provided:

"§1504. Allocation

(a) Allocation of entire net income. The portion of entire net income of a taxpayer to be allocated within the state shall be the amount determined by multiplying such income by the income allocation percentage determined by:

(1) ascertaining the percentage which the taxpayer's New York premiums for the taxable year bear to the taxpayer's total premiums for the taxable year, and multiplying such percentage by nine,

(2) ascertaining the percentage which total wages, salaries, personal service compensation and commissions for the taxable year of employees, agents and representatives of the taxpayer within New York bear to the total wages, salaries, personal service compensation and commissions for the taxable year of all the taxpayer's employees, agents and representatives, and

(3) adding the amounts determined under paragraphs one and two and dividing the sum by ten."

F. That under Tax Law §1504(a)(2) petitioner is not entitled to net its wage expense by the reimbursements received from its parent.

G. That petitioner's argument that 20 NYCRR 4-5.1(c) requires that its payroll factor be computed in the same manner as it reports to the New York



State Insurance Department is erroneous. This section of the regulations refers to reporting wage or salary expense on a cash or accrual basis and does not adopt the method of accounting used to file financial statements with the New York State Department of Insurance.

H. That, on the basis of Finding of Fact "8", the amount of tax asserted due in the Notice of Deficiency dated October 15, 1981 is reduced by \$2,750.00. It is noted that the Audit Division's failure to give petitioner credit for its prepayment with its return for 1978 does not warrant any other adjustments to the amount of tax asserted in the Notice of Deficiency.

I. That the petition of Transamerica Insurance Company of New York, formerly Premier Insurance Company of New York, is granted to the extent of Conclusion of Law "H" and the Audit Division is directed to modify the Notice of Deficiency dated October 15, 1981 accordingly; the Notice of Deficiency is, in all other respects, sustained.

DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION

Rodwin de la Cruz  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Juh  
COMMISSIONER